

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

PROGRESSIVE GARDEN STATE
INSURANCE COMPANY,

Plaintiff,

v.

Civ. No. 21-1200 KK/JHR

ANDREA RYAN-DAVIS, et al.,

Defendants.

**ORDER APPOINTING GUARDIAN AD LITEM, GRANTING LEAVE TO FILE
GUARDIAN AD LITEM REPORT UNDER SEAL, AND SETTING SEALED FAIRNESS
HEARING AND DEADLINE FOR THE GUARDIAN AD LITEM'S REPORT**

THIS MATTER comes before the Court upon the Parties' Motion for Appointment of Guardian ad Litem and Approval of Settlement. (Doc. 16.) The Court, having been sufficiently advised, hereby appoints Feliz Rael, Esq. (the "GAL") as guardian ad litem to serve as an arm of the Court to report on the fairness of the settlement and disposition of proceeds for the minor beneficiary.

All immunities and privileges available to the guardians ad litem, as articulated by the New Mexico Supreme Court in *Collins v. Tabet*, 111 N.M. 391, 806 P.2d 40 (1991) shall be extended to the GAL in this matter.

With respect to sealing the GAL's report and the fairness hearing, the Court finds as follows:

1. This matter involves a settlement of a claim brought on behalf of a minor child. and involves issues of a sensitive and private nature.
2. This matter is before the Court because one of the beneficiaries of the proposed settlement is a minor child.

3. But for the Court's duty to review and consider the terms of the proposed settlement, all matters related to these transactions and agreements would be outside the public view.

4. In order to provide the Court with information necessary to support an informed discussion of the issues before the Court, the GAL:

a. may include specific facts relating to the child's past and future psychological and/or physical concerns in her report.

b. may be required to openly discuss with counsel the relative merits, strengths and weaknesses of all claims and defenses so as to properly inform this Court as to the sufficiency and effect of the settlement.

c. will be required to discuss and disclose intimate details and facts about the minor child, which are not matters of public concern.

5. Disclosing facts of the child's claims, condition, status and needs to the public would cause the minor child unwarranted embarrassment, and other significant injury.

6. In preparing her opinions and observations of the case facts, the GAL is expected to discuss disputed issues of fact, which were not proven, but were merely alleged. Reputation and business interests could be harmed by the release to the public of such opinions, which are for the Court's consideration only in its duty under the law to review the facts and circumstances of the settlement.

7. The child whose claims are before this Court has a compelling interest in the privacy of his/her circumstances as they relate to this case. That interest overrides and overcomes the right of public access to those portions of the court record that contain such information.

8. In the settlement agreement of this case, the parties bargained for and contemplated that confidentiality as to the amount and as to the case itself be part of the agreement. Such an agreement does not violate public policy when the terms and conditions involve a minor child, who is entitled to special protection from this Court.

9. The child whose claims are before this Court has a compelling interest in maintaining the confidentiality of discussions between his/her attorney, his/her parents, and the GAL. That interest overcomes and overrides the right of public access to those portions of the court record that contain such information.

10. The child's overriding interests support sealing the court record relating to the Court's substantive fairness review of the minor settlement.

11. A substantial probability exists that the child's interests will be prejudiced if the court record detailing the proposed minor settlement and other confidential matters in the GAL report is not sealed.

12. There is no less restrictive means available to protect the parties' interests than the Court sealing from public view the Report of the GAL and the fairness hearing in this case.

IT IS THEREFORE HEREBY ORDERED THAT:

1. Feliz Rael, Esq. is appointed as guardian ad litem to serve as an arm of the Court to report on the fairness of the settlement and disposition of proceeds for the minor beneficiary
2. The GAL report, and all attachments, together with the transcript of proceedings where the Court considered the GAL report, shall be sealed, and protected from public view.
3. The GAL fees shall be paid by Progressive Garden State Insurance Company.

4. A Fairness Hearing, at which the Court will consider approval of the parties' proposed minor settlement agreement, is scheduled for **Tuesday, December 13, 2022, at 1:30 p.m. via Zoom videoconferencing** with all participants appearing remotely. The Zoom ID and Passcode will be filed separately in a sealed Notice of Zoom Information; counsel are responsible for providing this Notice to their clients and any other persons who are authorized to participate in the conference on their clients' behalf. Participants should connect to the proceeding fifteen (15) minutes before it is scheduled to start to allow enough time to resolve any connectivity issues. Participants are encouraged to use a headset to reduce static and background noise; if not using a headset, participants must ensure that the audio feed at their location is muted when not speaking.

*****Recording or broadcasting of this conference is prohibited.*****

5. The GAL, the minor's parent(s) and/or legal guardian(s), and counsel for the parties are required to attend the hearing. The minor child and any client representatives defense counsel deem necessary may also, but are not required to, attend. Given the confidential nature of the proceedings, no other persons are permitted to attend the hearing without leave of the Court.
6. The GAL shall file her sealed report no later than **Wednesday, December 7, 2022**.

IT IS SO ORDERED.


HON. JUDGE KIRTAN KHALSA
UNITED STATES MAGISTRATE JUDGE